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Date of Decision: 9-11-95

Special Civil Application No.3181 of 1982

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.Y.S.Mankad, learned counsel for the petitioner.

Mr.P.R.Nanavati for Mr.S.I.Nanavati, learned counsel for the respondents.

Coram: (M.R. Calla, J.)

Dt: 9-11-95

ORAL JUDGMENT:

This Special Civil Application is directed against the order dated 1-5-82 passed by the Labour Court, Ahmedabad in an Application under S.33C(2) of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act') whereby the application was rejected on the preliminary objection that the petitioner was not a workman within the meaning of 2.S of the Act.

The petitioner was appointed as a Shift Incharge

Engineer on 17-1-76 with the salary of Rs.750/- P.M. The petitioner tendered his resignation by application dated 12-7-79 and put in service upto 21-7-79. On 8-9-79 the petitioner was served with a show cause notice for remaining absent from duties without leave for a period from 1-8-79 to 8-9-79. In this notice it was further alleged that the petitioner had bound himself to serve the opponent-Company for a period from 1-2-76 to 31-1-80 and thus by giving resignation in July,1979 i.e.before 31-1-80 he had committed the breach of the agreement.In the Application moved by the petitioner under S.33C(2) of the Act, the petitioner made the following claims:-

"(i) Rs.1070/- on account of pay for the month of July,1979.

(ii) Rs.2354/- on account of earned leave accumulated for 56 days and not enjoyed.

(iii) Bonus for the years 1978 Rs.1070/-

(iv) Bonus for the period from 1-1-1979 to 31-7-1979 Rs.624/-

(v) Two instalments paid in the compulsory deposit scheme amounting to Rs.40/-

The total amount thus comes Rs.5158/-"

The total claim was for a sum of Rs.5158/-. A preliminary objection was raised in the proceedings under S.33C(2) of the Act that the petitioner was not a workman within the meaning of S.2-S of I.D.Act. While discussing the evidence, the Labour Court has noted that the petitioner was working as an Engineer Incharge of the Shift and he failed to give any particulars that he personally operated the machine. He was acting as a supervisor over his subordinates and even if casually he had operated the machine,it would not make him a workman. The Labour Court has held that substantially the work of the petitioner was to supervise the technicians and operators, who operated the machines. The petitioner was not personally a technician, but on account of his technical knowledge, he was supervising the operators. Reference has also been made to certain documents indicating that the petitioner as an Incharge of the Shift was answerable on the question of the over all production in the Shift and he was just a Supervisor of the operators and not the operator himself. After considering the evidence and the case law, which was

cited before the Labour Court, the Labour Court came to the conclusion that the petitioner was not a workman as defined under S.2.S of the Act and the application was dismissed on this ground alone.

I have gone through the pleadings in the Special Civil Application and have perused the Labour Court's order dated 1-5-82 passed in the proceedings under S.33C(2) of the Act. I find that the order has been passed after due consideration of the entire material, which was available, and after examining the legal position and looking to the amount of salary of Rs.1070/P.M. drawn by the petitioner and the nature of the supervisory duties, which were discharged by the petitioner as Engineer Incharge of the Shift, it has been concluded that the petitioner was not a workman, but had served the respondent-Company from 1976 to July,1979 in supervisory and managerial capacity. Hence I do not find any good ground to interfere with the order passed by the Labour Court in the proceedings under S.33C(2) of the Act, rejecting the petitioner's claim for Rs.5158/-. Special Civil Application is accordingly dismissed. Rule is hereby discharged. No order as to costs.